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Testifying on Behalf of Governor Jane M. Swift

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Admiral Watkins and distinguished Commission members, on behalf of Governor Jane Swift I welcome you to Boston and thank you for this opportunity to testify.

My testimony will focus on governance issues, as changes in ocean and coastal governance structures are the vehicle through which improvements in research, technology, stewardship, management, and investments in coastal and ocean resources will be made. My comments on ocean and coastal governance are based on recommendations that will soon be presented to you by the coastal states organization. I will use my time today to draw on some recent examples in Massachusetts that highlight relevant governance issues.

Ocean Governance

Massachusetts has a long history of asserting our views about how offshore resources should be used – whether it be questioning and ultimately halting Georges Bank oil drilling in the 1970s, successfully gaining fishery management jurisdiction for Nantucket Sound, championing the designation of the Stellwagen bank national marine sanctuary adjacent to state waters in the early 1990s, or today claiming federal consistency review over a proposed offshore wind farm in federal waters**. Massachusetts is culturally and economically invested in the ocean and does not hesitate to make our views known.** While we clearly recognize the limits to state jurisdiction in the legal sense, we have always considered the continental shelf to be an extension of our state, both in terms of its geological formations and more importantly the wealth of life they support. There is no question that places such as Georges Bank, Jeffreys Ledge, and Stellwagen Bank have strong historic and present-day ties to Massachusetts.

Governance of ocean resources within U.S. territorial waters historically has been dictated by the practice of "first come, first serve." Early governance of ocean resources focused on protecting national boundaries and fishing grounds, and in the last forty years has evolved further to include the creation of the Nation Oceanic and Atmospheric Administration (NOAA), and innovative federal/state partnership under the Coastal Zone Management Act, and the Magnuson-Stevens Fisheries Management and Conservation Act. Until very recently, the ocean was used for fishing, recreating, transportation, military use, and, unfortunately, waste disposal. Proposals to utilize our oceans have expanded significantly in the past decade. Coastal managers at the local, state, and

federal levels now regularly review projects and ocean uses that ten years ago were considered visionary or futuristic.

In the last year alone, my agency, the Executive Office of Environmental Affairs, has reviewed or is currently reviewing proposals for:

- Marine-based aquaculture;
- Two natural gas pipelines – one to extend from Beverly on the North Shore to Quincy on the south shore. The other would pass around Georges Bank bringing natural gas from Sable Island, Nova Scotia to New York City;
- A wave energy production facility;
- Two fiber optic cables; and
- An offshore wind farm in Nantucket Sound, with 170 towers 440 feet high. "Cape Wind," as the project is called, would occupy 25 square miles of Nantucket Sound. This area is used intensively for recreational boating and fishing, commercial fishing, and marine transportation. It also has archeological resources and is part of the eastern migratory bird flyway. The project is proposed to be entirely in federal waters with the exception of the electricity transmission lines that would land on Cape Cod. This project, which would be one of the largest offshore wind farms in the world if built, has raised numerous complex questions that we are in the process of trying to reconcile.

Our extensive interagency review of these projects and the recent much-publicized fisheries management issues in the Gulf of Maine have raised several interrelated ocean policy issues, specifically:

1. Regional flexibility;
2. Public trust responsibilities;
3. Lack of a coordinated plan for reviewing and allocating marine uses in state waters and the Exclusive Economic Zone (EEZ), and the need for a federal agency to lead ocean management efforts; and
4. The need for ocean mapping to support ocean management.

Regional flexibility

One of our principal recommendations to the Commission is to strengthen the federal government's role in ocean governance, in partnership with the states. Flexibility for states and for regional management efforts is an integral part of this needed change. The Gulf of Maine Council on the Marine Environment, which you'll hear about tomorrow morning, and the fisheries management councils are two examples of regional efforts that require greater flexibility at the federal level. For example, regional fisheries management councils should not be dictated by a "one size fits all" approach. Sustainable stocks are the basis for our fishing industry, but sound science, innovative

approaches, and regional management flexibility are key to balancing biological sustainability with economic sustainability.

Public trust responsibilities

The submerged lands of the United States, whether they are under state or federal jurisdiction, are public lands held in trust by the government with attendant public trust responsibilities. Massachusetts was the first of the original colonies to codify the public trust doctrine, and it has been a fixture of state law ever since. Passage of the Public Waterfront Act, also known as "Chapter 91," occurred in 1865, and is the oldest statute to regulate development in the nation. Current regulations under "Chapter 91" articulate priorities for use of all tidelands subject to the public trust, including filled tidelands common along our urbanized coast, and require that any private use of tidelands be mitigated by some type of public benefit – usually either access and other water dependent improvements in addition to payment of an occupancy fee.

In federal waters, no such fee structure exists, except for the extraction of hard minerals, oil, and gas. Under current laws, a facility like "Cape Wind" could be constructed on public submerged lands without compensating the federal government. We understand that a bill has just been introduced to give the Minerals Management Service of the U.S. Department of the Interior authority to review and lease areas of the EEZ for renewable energy production facilities. We support the recognition that this regulatory gap exists for projects like "Cape Wind," but believe that a more comprehensive EEZ management and leasing authority is urgently needed to provide planning, coordination, regulatory oversight, leasing, and environmental protection for the full range of EEZ uses, including open ocean aquaculture.

I recommend that a federal EEZ leasing structure be established as a means of ensuring that the public receives some benefit from privatization of public resources. These benefits could be lease payments to help support ocean and coastal management efforts, or related projects, such as monitoring and mapping. A lease structure would lend both predictability and equity to future EEZ development and use.

Increased ocean management efforts

The regulatory structure for offshore development is complex, overlapping and not well-coordinated in state and federal waters. Despite the seemingly excessive regulatory maze, there is no primary agency at the federal level to provide leadership and planning for these areas. The ocean is managed through a default patchwork of authorities, none of which provide coordinated environmental review for multiple uses. This fragmented regulatory process results in confusion both by applicants and regulatory agencies and translates into a loss of economic development potential for our nation.

I recommend that NOAA's Ocean and Coastal Resource Management division be charged with overseeing the development of a coordinated and proactive framework for environmental protection, economic use, and scientific exploration for the EEZ, as well

as state territorial seas. This ocean framework should be developed in partnership with adjacent states and should extend the federal/state partnership established under the Coastal Zone Management Act. Federal consistency, the development of Marine Protected Areas, and ocean zoning should be key aspects of this framework.

Seafloor mapping to support ocean management

The comprehensive mapping of marine ecosystems and habitats is fundamental to understanding the marine environment and appropriately managing underwater habitats. Mapping seafloor habitats will also further the Administration's efforts to identify areas that should be designated as marine protected areas. Without adequate maps, we are handicapped to even begin to manage marine areas. We are in dire need of specific information about seafloor habitats and geology.

I look to this Commission to support mapping and exploration of all our ocean areas – starting of course, with the Gulf of Maine. The goal should be to develop information by the year 2012 on our ocean areas comparable to terrestrial maps that currently guide management efforts on land.

Comments on the fishing industry

Some of the most pressing maritime issues here in Massachusetts and in New England in general are the state of our fishing stocks and the habitats that support them. The Massachusetts marine economy is prominent in the global marketplace and represents one of the Commonwealth's most valuable industrial sectors. The landed value of our commercially caught fish and direct expenditures related to our recreational saltwater fishing exceed a half billion dollars each year, while the entire maritime economy in Massachusetts employs over 80,000 people who earn annual salaries totaling almost $2 billion. Our management goals must focus on achieving economical levels of fishing that do not jeopardize the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.

The solution to many of the region's fishery management problems lies with conservation engineering or modification of fishing gear to minimize the impact on ocean bottom fisheries habitat, to dramatically reduce by-catch, and provide fishermen access to to fishing grounds where they might otherwise be prohibited. The Massachusetts Division of Marine Fisheries (DMF) is known internationally for our Conservation Engineering Program that has developed nets in cooperation with fishermen to reduce by-catch and initiate new fisheries. In fact, DMF staff has just finished designing two new nets that dramatically reduce cod by-catch when fishing for other species, and is seeking approval from the New England Fishery Management Council for these designs.

I recommend that conservation engineering efforts, such as those I have described, be supported by the National Marine Fisheries Service and by the regional fisheries management councils. In addition, the federal government should provide incentives to

fishermen and gear designers to work collaboratively with a minimum of regulatory hurdles.

I applaud the Commission and its staff for their commitment to the mission of improving our nation's ocean policy and I hope my testimony here today has been helpful. In making its final recommendations, I urge the Commission to include implementation plans and timelines to guide, inform, and encourage timely and decisive action by the Congress and the Administration. Thank you.